

Exhibit 9

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 CASE NO. 18-MD-2865 (LAK)

4 IN RE:)
5)
6 CUSTOMS AND TAX ADMINISTRATION OF)
7 THE KINGDOM OF DENMARK)
8 (SKATTEFORVALTNINGEN) TAX REFUND)
9 SCHEME LITIGATION)
This document relates to case nos.)
19-cv-01783; 19-cv-01788; 19-cv-01794;)
19-cv-01798; 19-cv-01918)

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11
12 C O N F I D E N T I A L

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15 REMOTE VTC VIDEOTAPED DEPOSITION UNDER ORAL
16 EXAMINATION OF
17 JOHN VAN MERKENSTEIJN
18 DATE: April 19, 2021

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25 REPORTED BY: MICHAEL FRIEDMAN, CCR

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1 TRANSCRIPT of the videotaped deposition
2 of the witness, called for Oral Examination in the
3 above-captioned matter, said deposition being taken
4 by and before MICHAEL FRIEDMAN, a Notary Public and
5 Certified Court Reporter of the State of New Jersey,
6 via WEBEX, ALL PARTIES REMOTE, on April 19, 2021,
7 commencing at approximately 10:32 in the morning.

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1 JOHN VAN MERKENSTEIJN,
2 called as a witness, having been first
3 duly sworn according to law, testifies as follows:
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5

6 EXAMINATION BY MR. WEINSTEIN:

7 Q Okay. Sir, my name the Marc
8 Weinstein. I'm with the firm of Hughes,
9 Hubbard & Reed, LLP. We represent the
10 plaintiff SKAT in this deposition. I will be
11 asking you the questions throughout the day.

12 Can you start by just telling us
13 how you pronounce your last name?

14 A Van Merkensteijn.

15 Q Okay. Well, I now have no excuses
16 if I get it wrong.

17 A Okay.

18 Q Okay. Mr. Van Merkensteijn, during
19 the day, as you can tell, we have a court
20 reporter —

21 A I'm hearing a lot of echo or static
22 or something.

23 THE VIDEOGRAPHER: Stand by. The
24 time is 10:34 a.m. and we're going off
25 the record.

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1 A Well, I assume so.

2 Q Yeah. 6,250,000 shares?

3 A Before I say yes, let me look.

4 (Witness reviewing.)

5 Okay. Yes.

6 Q Did you have any understanding as
7 to how stock loan transactions were a part of
8 the strategy?

9 A It would have been a method of
10 borrowing money to pay for the shares.

11 Q Okay. So earlier, when you
12 referred to borrowing money, it's through
13 this kind of transaction?

14 A However they wanted to do it. But
15 this is one way to borrow against the stock.

16 Q Right. And were you aware that in
17 each case in which one of the pension plans
18 purchased stock, it made a stock lending
19 transaction for the same amount?

20 A I mean, more or less, yeah.

21 Q The counterparty in the trade is
22 Aquila (Cayman)?

23 A Where -- oh, yeah. Okay.

24 I see that.

25 Q Are you familiar with an entity

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1 called Aquila (Cayman)?

2 A No, sir.

3 Q All right. And prior to the
4 Xiphias plan having entered into stock
5 lending deals with that entity, did you have
6 any knowledge of what it was?

7 A No, I have no knowledge.

8 Q Do you know who introduced that
9 entity into the transaction?

10 A I don't know, no.

11 Q All right. Was it your
12 understanding that Solo Capital was bringing
13 in the various counterparties?

14 A Yes, sir.

15 Q Okay. So here we saw a purchase of
16 future and a stock loan for the TDC stock.

17 Was it your understanding that Solo
18 arranged to have those various counterparties
19 involved?

20 A Yes. Solo, for us, was one-stop
21 shopping. They provided each of the parties
22 that we needed to do the transaction.

23 Q Okay. With respect to the purchase
24 of the stock, at the time, did you have any
25 understanding of any arrangement that had

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1 Q We can hear you now.

2 Can you hear me?

3 A Yes. Now I hear you through my
4 headset.

5 MS. MCCARTHY: And we hear you
6 well.

7 A And I have a circle going around
8 and around and around. There we go. Okay.

9 I don't know why it decided to do
10 that.

11 So where were we?

12 MR. WEINSTEIN: Mike, maybe you
13 could read the last question and the
14 beginning of the answer?

15 (Whereupon the record was read back
16 by the reporter.)

17 A So I was responding to your earlier
18 question where I said, "Did I do any due
19 diligence on any of these parties?" And I
20 remember there was one that I did go visit
21 the office and meet the people.

22 Q Which one was that?

23 A That was called Old Park Lane.

24 Q Okay. Is it fair to say that with
25 respect to a stock lending counterparty like

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1 Aquila (Cayman), that you were not familiar
2 with the financial condition of the entity?

3 A Correct.

4 Q All right. You would not know
5 where Aquila (Cayman) would get the money to
6 provide the financing for the plan's
7 purchase.

8 Is that right?

9 A No. I didn't know anything about
10 Aquila.

11 Q Can you turn to Exhibit 2275?

12 MR. WEINSTEIN: Mark this as 2275.

13 (Whereupon the above mentioned was
14 marked for Identification.)

15 A (Witness reviewing.)

16 Q So the first page of Exhibit 2275
17 is a cover letter from Acupay to SKAT
18 attaching a reclaim application for the
19 Xiphias Pension Plan.

20 Do you see that?

21 A I see that.

22 Q All right. Were you aware that
23 after the Xiphias plan made purchases of
24 Danish securities, that Acupay would file
25 reclaim applications to SKAT for refunds?

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1 know, split the profits and try to get as
2 close to a third, a third, a third, as we
3 discussed.

4 But at one point or another, either
5 Rob took the leading role or Rich took the
6 leading role.

7 Q And regardless of who took the
8 leading role at any point in time, were the
9 same activities executed on behalf of all the
10 plans?

11 MS. MCCARTHY: Objection to form.

12 A I don't know.

13 Q Okay. All right. I'm going to
14 just -- rather than going through a bunch of
15 documents, I'm going to list a number of
16 stock lending counterparties with which the
17 Voojo plan onboarded.

18 And just let me know if you've had
19 heard of any of them prior to being involved
20 with the Voojo plan.

21 Neoteric?

22 A No.

23 Q Colbrook?

24 A No.

25 Q Gnosis?

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1 A No.

2 Q Philo Capital? That's P-H-I-L-O?

3 A No.

4 Q Treehurst?

5 A No.

6 Q Equal Services?

7 A What?

8 Q Equal Services?

9 A Equal? No.

10 Q Diverse Vision?

11 A No.

12 Q Fintech Consultancy?

13 A No.

14 Q Trance Services?

15 A No.

16 Q Prince Solutions?

17 A No.

18 Q TechEvolve?

19 A No.

20 Q And Principal Markets?

21 A No.

22 Q Okay. And do you know if anyone on

23 behalf of the group performed any due

24 diligence with respect to these potential

25 stock lending counterparties prior to

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1 onboarding?

2 A I don't know.

3 Q Can you turn, please, to
4 Exhibit 2206?

5 MR. WEINSTEIN: Mark this as 2206.

6 (Whereupon the above mentioned was
7 marked for Identification.)

8 A The books are getting heavier.
9 Okay.

10 Q This is an e-mail from Mr. LaRosa
11 in February of 2014. This says, "Folks,
12 seems that Solo wants us to trade with a
13 forward instead of futures going forward.
14 Please see the language below that they wish
15 me to send out to Amalthea, who will be
16 providing that service."

17 Were you part of any discussions in
18 which -- that you learned that Solo wanted to
19 switch from using futures to forwards?

20 A No, I was not.

21 Q Did you have an understanding as to
22 why that switch was made?

23 A I don't know why Solo wanted us to
24 change that.

25 Q Did you know if Solo was getting

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1 We can figure it out, but.

2 Q What statements would you look at
3 in order to figure that all out?

4 A I had an accountant, and gave him
5 all the information, and asked him to
6 organize some kind of books so that we could
7 keep track of what happened.

8 Q Is that Ron Carlen at Citrin
9 Cooperman?

10 A Yes.

11 Q Do you have a ballpark sense of how
12 much money you and your plans earned from the
13 participation in dividend arbitrage trading
14 in Denmark?

15 A I have a ballpark figure that could
16 be right or wrong, but somebody asked me that
17 the other day. I would guess in excess of
18 35 million or so.

19 Maybe that includes Belgium, I
20 don't know. That's just a number that I have
21 in my head.

22 Q Would the large majority of your
23 profits come from Denmark?

24 A The majority comes from Denmark.

25 Q Do you have a sense overall of the